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UNCIVIL ASSET FORFEITURE: AN ANALYSIS OF CIVIL
ASSET FORFEITURE AND VIRGINIA H.B. 48

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ABSTRACT

Introduced in 2016, Virginia House Bill 48 proposed civil forfeiture reforms which would raise the burden of proof required for law enforcement agencies to seize property related to criminal activity. Civil forfeiture has grown in recent decades to deprive innocent property owners of their belongings, often due to connections between the property seized and persons accused of using the property illegally without the owners' consent. Additionally, with a burden of proof much lower than the standard that must be met for a criminal conviction, civil forfeiture as it stands now risks depriving property owners of their possessions despite a lack of sufficient evidence of guilt. This Comment presents a brief history of civil asset forfeiture in the United States, describes current federal and Virginia law on the subject, summarizes the components of House Bill 48 and concludes by arguing in favor of civil asset reforms like those seen in H.B. 48.

INTRODUCTION

"I was so upset thinking somebody's going to take my house for nothing," Christos Sourovelis said, shaking his head.¹ In 2014, Sourovelis' son was arrested for selling \$40 of illegal drugs outside their family home. Ninety days later, the police returned with a civil lawsuit against the \$350,000 Sourovelis house, immediately forcing the family out onto the street.² Neither Christos, nor his wife, had any knowledge of their son's illicit activities, but this nightmare was made possible through civil asset forfeiture.³

The Sourovelis story is no isolated incident. As the Washington Post revealed in a recent investigative series, multiple motorists, who had not been charged with crimes, had property confiscated by police. Mandrel Stuart of Staunton, Virginia, lost \$17,550 when he was stopped by Fairfax County police in Northern Virginia for a minor traffic infraction; John Anderson lost \$25,000 after being pulled over for waiting too long to signal while

¹ Pamela Brown, *Parents' House Seized After Son's Drug Bust*, CNN (Sept. 8, 2014), <http://www.cnn.com/2014/09/03/us/philadelphia-drug-bust-house-seizure/>.

² *Id.*; Jeremy Roebuck, *D.A.'s Office Reaches Partial Settlement in Forfeiture Suit*, PHILA. INQUIRER (June 25, 2015), http://www.philly.com/philly/news/20150625_Philadelphia_District_Attorney_reaches_partial_settlement_in_civil_forfeiture_suit.html.

³ Brown, *supra* note 1.

changing lanes in Nebraska; and the list goes on.⁴ Once the property is seized, even without a conviction or charge, a property owner is not able to retrieve his or her assets without going through legal procedures that place the burden of proving innocence on the property owner. Stuart, a thirty-five year old African American owner of a small barbeque restaurant, rejected a settlement with the government for half of his money that was seized and demanded a jury trial.⁵ Stuart eventually got his money back, but lost his restaurant in the process by dedicating large amounts of time and money to the contestation.⁶

Civil forfeiture is a legal proceeding where the government brings a civil action — which is remedial, not punitive like a criminal proceeding — against property. By acting civilly, the government seeks to remedy a harm through the judicial fiction of the property's guilt.⁷ Although the Supreme Court holds civil asset forfeiture has long existed in our nation's history,⁸ following the attacks on September 11, 2001, law enforcement agencies were encouraged to act more aggressively in searching for suspicious people, drugs, and other contraband.⁹ The departments of Justice and Homeland Security began funneling millions of dollars into police training for the hard-hitting searches, and the effort succeeded.¹⁰ However, perhaps the greatest impact is one largely blinded from the public's eye: the growth of civil asset forfeiture.

Progressive and conservative groups, alike, have actively tried to reform civil forfeiture laws.¹¹ In response to public outcry, some states have re-evaluated these laws in an attempt to protect the property rights of innocent

⁴ Robert O'Harrow Jr., Steven Rich, Michael Sallah, & Gabe Silverman, *Stop and Seize: Aggressive Police Take Hundreds of Millions of Dollars from Motorists Not Charged with Crimes*, WASHINGTON POST, Sept. 6, 2014, <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>. See generally Brad Reid, *An Overview of Civil Asset Forfeiture and Recent Cases*, HUFFINGTON POST (Aug. 14, 2013), http://www.huffingtonpost.com/brad-reid/civil-asset-forfeiture-ch_b_3745209.html; DICK M. CARPENTER ET AL., *POLICING FOR PROFIT THE ABUSE OF CIVIL ASSET FORFEITURE 4 & 9* (Institute for Justice, 2015), http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf.

⁵ O'Harrow Jr., *supra* note 4.

⁶ *Id.*

⁷ *Forfeiture*, THE LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/forfeiture> (last visited Nov. 24, 2016).

⁸ *Bennis v. Michigan*, 516 U.S. 442, 446-47 (1996); see also *The Palmyra*, 25 U.S. 1, 14-15 (1827).

⁹ O'Harrow Jr., *supra* note 4.

¹⁰ *Id.* (referencing the investment in police training that resulted in more aggressive search and seizures.)

¹¹ Kanya Bennett & Nkechi Taifa, *There Is Bipartisan Agreement on the 'Uncivility' of Civil Asset Forfeiture*, ACLU (Apr. 20, 2015, 3:00PM), <https://www.aclu.org/blog/washington-markup/there-bipartisan-agreement-uncivility-civil-asset-forfeiture>.

third parties. Despite this response, according to the Institute for Justice, only seven states earn a B-rating or higher on their civil forfeiture laws.¹²

The Virginia General Assembly should reform its civil asset forfeiture laws because taking one's property without establishing guilt presents due process concerns and the policy has evolved into a form of potential policing abuse. Virginia House Bill 48 is a positive step forward. The law would require a finding of guilt before property suspected of being used in connection with the commission of a crime is forfeited to the Commonwealth.¹³ Under this legislation, Virginians would receive much more protection from civil asset forfeitures.

Part I of this comment explains the constitutional theory behind civil forfeiture. Part II outlines both the current federal and Virginia legal landscapes addressing civil forfeiture and associated problems. Part III details Virginia House Bill 48, introduced in the 2016 Virginia General Assembly Session to address civil forfeiture concerns, and proposes potential contemporary policy reform.

I. CONSTITUTIONAL FICTION OF CIVIL FORFEITURE

The Supreme Court holds civil forfeiture has long existed in the fabric of our laws, and is therefore constitutional.¹⁴ In *Bennis*, a woman fought the seizure of her car, which she jointly owned with her husband, after her husband was caught having sex with a prostitute in the vehicle.¹⁵ By citing *The Palmyra*, an 1827 admiralty case, and claiming, "the cases authorizing actions of the kind at issue are too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced," the Supreme Court upheld the seizure with the then-new "facilitating property" theory.¹⁶

It has long been settled that statutory forfeitures of property entrusted by the innocent owner or lienor to another who uses it in violation of the revenue laws of the United States is not a violation of the due process clause of the Fifth

¹² CARPENTER II, *supra* note 4, at 22 (showing that the Institute for Justice grades each State based on three elements: the financial incentive for law enforcement to seize, the government's standards of proof to forfeit, and who bears the burden in innocent owners claims).

¹³ H.B. 48, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?161+sum+HB48>.

¹⁴ *Bennis v. Michigan*, 516 U.S. 442, 446-47 (1996).

¹⁵ *Id.* at 443.

¹⁶ *Id.* at 453 (Chief Justice Rehnquist, writing for the majority, affirms the seizure of the Bennis vehicle because, "[t]he Bennis automobile...facilitated...in criminal activity.").

Amendment [...] [t]he thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing.”¹⁷

The *Bennis* decision expands the scope of civil forfeiture to include property that is connected with facilitating the commission of a crime, even when an innocent owner is involved.¹⁸ Justice Stevens dissented, asserting, “Even judged in isolation, the remedial interest in this forfeiture falls far short of that which we have found present.”¹⁹ Stevens argues no sufficient nexus exists between the *Bennis* automobile and the offense her husband committed.²⁰ Mrs. *Bennis* was entirely without responsibility for the crime.²¹ As Stevens predicted in 1996, the *Bennis* analysis permits the States to exercise “virtually unbridled power” to confiscate vast amounts of property where criminals have engaged in illegal acts.²²

II. CURRENT FEDERAL LAW AND VIRGINIA LAW ADDRESSING CIVIL ASSET FORFEITURE

Although civil asset forfeiture was only recently elevated to national concern, it is hardly a new problem.²³ What was once an arcane procedure used in old admiralty practices has grown into an aggressive brand of policing by government. This modern iteration of a once forgotten practice permits the seizure of hundreds of millions of dollars in cash, property, and real property from Americans who have not been charged with crimes.²⁴ In fact, through the use of criminal and civil asset forfeiture, the federal government seized \$29 billion in assets between 2001 and 2014, including \$2.5 billion in cash without warrants or indictments and \$4.5 billion of assets in 2014, alone.²⁵ Eighty seven percent of those assets were taken through civil forfeiture, not requiring a conviction.²⁶ These numbers certainly call for some concern, but the call to action has yielded little reform.

¹⁷ *Id.* at 447, 448 (internal quotations omitted); *see also* *The Palmyra*, 25 U.S. 1, 14 (1827) (stating that, in 1827, the United States captured the *Palmyra*, a vessel that had been commissioned as a privateer by the King of Spain, for attacking a United States vessel; the owner of the *Palmyra* asserted that the vessel could not be forfeited until he was convicted of privateering, but the Supreme Court rejected his defense.).

¹⁸ *Bennis*, 516 U.S. at 448.

¹⁹ *Id.* at 465 (Stevens, J. dissenting).

²⁰ *Id.*

²¹ *Id.* at 466.

²² *Id.* at 458.

²³ O’Harrow, *supra* note 4.

²⁴ *Id.*

²⁵ *CARPENTER II*, *supra* note 4, at 5 & 29.

²⁶ *Id.* at 5.

Civil forfeiture perpetuates an injustice that punishes innocent American property owners. Supporters contend civil forfeiture prevents further illicit use of the property and renders the illegal behavior unprofitable.²⁷ Despite the view that civil forfeiture is a powerful deterrent to crime, it serves as an increasingly critical revenue source for law enforcement, calling for fear of incentivized abuse. As President George H.W. Bush boasted, “[a]sset forfeiture laws allow the government to take the ill-gotten gains of drug kingpins and use them to put more cops on the streets.”²⁸ Civil forfeiture is associated with far fewer procedural safeguards than criminal law, and, as described above, affected property owners are often not criminals.

A. Federal Landscape

On its face, civil forfeiture seems like a clear violation of the Fifth Amendment’s mandate that a person cannot “be deprived of life, liberty, or property, without due process of law.”²⁹ Despite this constitutional cornerstone, Title 18 of the U.S. Code creates a framework of offenses and procedures governing the practice of civil forfeiture.³⁰ In civil forfeiture cases, the Court has repeatedly held due process only requires the agency to give a property owner of ordinary intelligence reasonable opportunity to know what conduct is prohibited before forfeiting the property.³¹ When law enforcement establishes probable cause of the property’s involvement in the suspected commission of a crime,³² it may seize the property without executing a warrant; the property can then be forfeited without a criminal charge or conviction.³³ Publication in a newspaper serves as notice and if a property owner files a claim to contest the forfeiture within the answer period, long, drawn-out civil hearings commence.³⁴

²⁷ *Bennis*, 516 U.S. at 465.

²⁸ President George H.W. Bush, Remarks at the Attorney General’s Summit on Law Enforcement, Responses to Violent Crime, Fed. News Serv. (Mar. 5, 1991).

²⁹ U.S. CONST. amend. V.

³⁰ 18 U.S.C. §§ 981, 983 (2012); *see also* 21 U.S.C. § 881 (2002) (Notwithstanding FED. R. CRIM. P. 41.)

³¹ *See Bennis*, 516 U.S. at 448.; *see also* U.S. v. Approximately 64,695 Pounds of Shark Fins, 520 F.3d 976 (9th Cir. 2008) (quoting General Elec. Co. v. EPA, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995).

³² ABOVE THE LAW: AN INVESTIGATION OF CIVIL ASSET FORFEITURE IN CALIFORNIA, 3,

https://www.drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Above_the_Law_Civil_Asset_Forfeiture_in_California.pdf (last visited Apr. 13, 2016) (stating that probable cause is the lowest standard of proof in the American judicial system).

³³ 18 U.S.C. § 981 (2012).

³⁴ 18 U.S.C. § 983 (2009).

In the 1990s, Congress expanded jurisdiction in civil forfeiture proceedings to include the district “in which any of the acts or omissions giving rise to the forfeiture occurred.”³⁵ Venue rules permit this broadened scope by allowing forfeiture proceedings to advance in the district where the forfeiture occurs, where the property is found, or where the property is transported, making it difficult for innocent property owners to recover their forfeited assets.³⁶ If no one contests a civil forfeiture, that forfeiture can be carried out administratively, without the involvement of a court.³⁷ The Federal Bureau of Investigation quips,

Many criminals are motivated by greed and the acquisition of material goods. Therefore, the ability of the government to forfeit property connected with criminal activity can be an effective law enforcement tool by reducing the incentive for illegal conduct.³⁸

While seemingly well intentioned, it is clear from the current state of affairs that civil forfeiture has gone awry.

B. Virginia Landscape

Four common problems perpetuate the injustice of civil forfeiture: the low burden of proof to seize assets, the low burden of proof to forfeit assets under contest, placing the burden to prove a property’s innocence on the property owner, and law enforcement agency forfeiture sharing.³⁹ Under current Virginia civil forfeiture laws, which the Institute for Justice claims are “some of the worst civil forfeiture laws in the nation,” police must only show probable cause to seize property without a warrant.⁴⁰ The government then needs to show, by a preponderance of the evidence, that the property has a suspected connection to a criminal activity, and 100% of forfeiture proceeds go to the law enforcement agency responsible.⁴¹

When state law doesn’t allow for a seizure, the policing agency can take the property through equitable sharing. Equitable sharing gives police the option of seizing assets under lax federal forfeiture laws when state law doesn’t allow such a seizure and then funnels up to 80% of the assets to the

³⁵ 28 U.S.C. § 1355(b)(1)(A) (2006).

³⁶ 28 U.S.C. § 1395 (2015).

³⁷ David Pimentel, *Forfeitures Revisited: Bringing Principle to Practice in Federal Court*, 13 NEV. L.J. 1, 7 (2012).

³⁸ FBI ON CIVIL FORFEITURE, https://www.fbi.gov/about-us/investigate/white_collar/asset-forfeiture (last visited Feb. 5, 2016).

³⁹ CARPENTER, *supra* note 4, at 43.

⁴⁰ *Id.*; *Commonwealth v. Thomas*, 43 Va. Cir. 335, 336 (1997).

⁴¹ See VA. CODE ANN. §§ 19.2-386.1, 19.2-382.10.; CARPENTER II, *supra* note 4, at 138.

seizing police agency.⁴² In other words, a law enforcement agency can pull a person over, cite to probable cause, search the vehicle, find some cash, seize the cash under state or federal law, fill the agency's coffers, and then spend that cash however it would like, with virtually no limitations or transparency. Following an uproar over distressed law enforcement budgets, the Justice Department recently resumed this controversial practice after a brief suspension.⁴³

Once property is seized under civil forfeiture laws, the property owner's only recourse is to hire an attorney within the time period specified in the government's notice and provide an innocent owner's defense. An innocent owner's defense requires the individual to prove: she is innocent, she is the owner of such property, she was unaware of the conduct giving rise to forfeiture, and she did all that reasonably could be expected under the circumstances to terminate such use of the property.⁴⁴ All the while, the police retain the property, the proceeding is usually advanced without a judge and the innocent property owner is forced to pay legal fees, fully aware that the success rate for winning back forfeited property is quite low.⁴⁵ Nearly \$26 million of the \$62 million in assets seized by Virginia law enforcement from 2008 to 2015 have been disbursed to the law enforcement agencies that conducted the seizure, so far.⁴⁶ The civil forfeiture process incentivizes bad policing as officers experience personal gain and are more likely to seize assets.

⁴² ABOVE THE LAW, *supra* note 32.

⁴³ Christopher Ingraham, The Feds Have Resumed A Controversial Program That Lets Cops Take Stuff and Keep It, WASHINGTON POST, (Mar. 28, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/03/28/the-feds-have-resumed-a-controversial-program-that-lets-cops-take-stuff-and-keep-it/>.

⁴⁴ 18 U.S.C. § 983 (2009).

⁴⁵ See CIVIL ASSET FORFEITURE: 7 THING YOU SHOULD KNOW, <http://www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know> (last visited Apr. 5, 2016).

⁴⁶ Mark Bowes, *Virginia Forfeiture Laws Come Under Scrutiny*, RICHMOND TIMES-DISPATCH (Aug. 2, 2015), http://www.roanoke.com/news/politics/virginia-forfeiture-laws-come-under-scrutiny/article_de1cd6f2-81a0-54b3-89ab-21cc0b22a2a8.html.

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III. VIRGINIA HOUSE BILL 48 AND THE FUTURE OF CIVIL FORFEITURE IN VIRGINIA

A. Virginia House Bill 48

Concerned about the broad effect of forfeiture laws, Delegate Mark L. Cole (R-House District 88), along with Delegates Marshall, Landes, LaRock and LeMunyon, introduced House Bill 48 in the 2016 Session of the Virginia General Assembly. If passed, House Bill 48 would have amended Virginia civil forfeiture laws by raising the burden of proof to stay the forfeiture until the Commonwealth establishes a required finding of guilt.⁴⁷ For at least the past several years, the Virginia General Assembly has attempted, and repeatedly failed, to reform the Commonwealth's civil asset forfeiture laws.⁴⁸ Last year was no different and Cole's bill failed by a vote of 47-50.⁴⁹ House Bill 48 did not go far enough, but it did address one major concern surrounding civil forfeiture laws. In part, the bill required:

Any action of forfeiture commenced under this section shall be stayed until the court in which the owner of the property is being prosecuted for an offense authorizing the forfeiture finds the owner guilty of such offense, and any property eligible for forfeiture under the provisions of any statute shall be forfeited only upon such finding of the owner's guilt, regardless of whether the owner has been sentenced. If no such finding is made by the court, all property seized shall be released from seizure.⁵⁰

One likely reason House Bill 48 failed was the passage of Senate Bill 457. In proving that the property is subject to civil forfeiture, Virginia Senate Bill 457 raised the Commonwealth's burden of proof from preponderance of the evidence to "clear and convincing evidence."⁵¹ Senate Bill

⁴⁷ H.B. 48, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), available at <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+HB48>.

⁴⁸ E.g., Travis Fain, *Virginia's Civil Asset Forfeiture Reform Effort Goes Down Again*, DAILY PRESS, April 15, 2015, <http://www.dailypress.com/news/politics/dp-virginias-civil-asset-forfeiture-reform-effort-goes-down-again-20150415-story.html>; 2016 SESSION HB 48 FORFEITURE OF PROPERTY USED IN CONNECTION WITH THE COMMISSION OF CRIMES; FINDING OF GUILT REQUIRED, <http://lis.virginia.gov/cgi-bin/legp604.exe?161+vot+HV0653+HB0048> (last visited Mar. 18, 2016) (The Virginia House of Delegates defeated the bill by a vote of 47-50 in 2016).

⁴⁹ 2016 SESSION HB 48 FORFEITURE OF PROPERTY USED IN CONNECTION WITH THE COMMISSION OF CRIMES; FINDING OF GUILT REQUIRED, <http://lis.virginia.gov/cgi-bin/legp604.exe?161+vot+HV0653+HB0048> (last visited Mar. 18, 2016) (The Virginia House of Delegates defeated the bill by a vote of 47-50 in 2016).

⁵⁰ H.B. 48, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), available at <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+HB48>.

⁵¹ S.B. 457, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?161+sum+SB457> (amending § 19.2-386.10) (The Virginia

457 is a smaller step in the right direction, but clear and convincing evidence is a lower burden of proof than “beyond a reasonable doubt,” like House Bill 48 would have established by requiring a guilty verdict.

B. The Future of Civil Forfeiture in Virginia

The concerns surrounding civil forfeiture can be mitigated while the Commonwealth still earns money and deters crime. The Virginia General Assembly should consider (1) shifting the burden of proof to the government to prove the property owner’s consent or knowledge of the crime leading to the seizure of property beyond a reasonable doubt; (2) transferring all funds attributable to civil forfeiture to a general fund, which then can be administered to law enforcement with oversight; (3) requiring more detailed reports on civil forfeitures and (4) recognizing civil forfeiture as a punitive measure for all purposes, calling for the application of normal standards of due process. With these reforms, property could only be forfeited upon a showing of guilt and the presumption would be against the Commonwealth, but law enforcement agencies could continue effectively removing criminal assets from crime.⁵²

In addition to legislative reform, the courts can make two simple improvements: (1) focus proceedings on unjust enrichment and (2) establish standards for assessing when forfeitures constitute excessive fines.⁵³ Legislative history demonstrates that the purpose of civil forfeiture was to take the profit out of crime, not to add punitive fines to punishments.⁵⁴ Staying true to this policy objective will help eliminate some of the injustices discussed above. Furthermore, using standards to assess excessive fines would likely protect innocent property owners, like the wife in *Bennis*, while continuing to remove assets from crime. The Fifth Amendment exists to protect property owners from Government; without reform, current civil forfeiture practices deny normal due process to innocent property owners and defeat their rights to property ownership.

General assembly passed the bill on March 10, 2016 and the Governor must sign by April 10, 2016 to become law); see VA. CODE ANN. §§ 19.2-386.1 (1991).

⁵² Donald J. Kochan, REFORMING PROPERTY FORFEITURE LAWS TO PROTECT CITIZENS’ RIGHTS, 31 (Mackinac Center for Public Policy, 1998).

⁵³ David Pimentel, *Forfeitures Revisited: Bringing Principle to Practice in Federal Court*, 13 NEV. L.J. 1, 36, 53 (2012).

⁵⁴ *Id.* at 52.

CONCLUSION

Political philosopher, Frederic Bastiat, wrote that the law should exist to protect life, liberty, and property, but often it is perverted into a means of “legal plunder.” The United States should strive to deter crime, but not at the expense of ‘uncivilly’ taking the assets of innocent property owners. Unfortunately, financial incentives through civil forfeitures incentivize overreaching and many property owners are reluctant to contest the proceeding due to fear of stacked decks, self-incrimination, and overhead costs.⁵⁵ Failure to contest forfeitures allows state governments to seize large amounts of property administratively, without a hearing or traditional due process.⁵⁶

When the United States Constitution was adopted, common law did not endorse using civil asset forfeiture against domestic citizens, therefore, one would think the use of civil forfeiture to forfeit domestic property would be unconstitutional.⁵⁷ Reformers had hoped the temporary suspension of equitable sharing was a signal that the Department of Justice was looking to rein in the practice, but law enforcement groups became enraged over budget concerns and members of Congress called for restoration of the payments.⁵⁸ With Congress feeling reluctant to reform the controversial practices of civil forfeiture and equitable sharing, reform largely falls on the states and courts. Courts can change policies to ensure more just civil forfeiture proceedings, while states can amend their respective practices. The Virginia General Assembly had the chance to make a great impact on this form of government taking, but instead settled for a slightly heightened standard of proof.⁵⁹ The new standard is certainly an improvement over the current standard, but the effectiveness of the new “clear and convincing evidence” burden of proof is hard to predict.

In one of the Court’s earliest decisions, Chief Justice Marshall recognized as “unquestionably a correct legal principle” that “a forfeiture can

⁵⁵ CARPENTER II, *supra* note 4, at 11-12.

⁵⁶ *Id.* at 13.

⁵⁷ *Compare* The Palmyra, 25 U.S. 1, 12 (1827) (civil forfeiture being used against a foreign privateer) *with* Bennis, 516 U.S. at 453 (the Court held cases authorizing actions of the kind at issue are too firmly fixed in the jurisprudence of the country).

⁵⁸ Christopher Ingraham, *The Feds Have Resumed a Controversial Program That Lets Cops Take Stuff and Keep It*, WASHINGTON POST, Mar. 28, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/03/28/the-feds-have-resumed-a-controversial-program-that-lets-cops-take-stuff-and-keep-it/>.

⁵⁹ *Compare* S.B. 457, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?161+sum+SB457> *with* H.B. 48, 2016 Gen. Assemb., Reg. Sess. (Va. 2016) (unenacted), *available at* <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+HB48>.

only be applied to those cases in which the means that are prescribed for the prevention of a forfeiture may be employed.”⁶⁰ In other words, a person cannot be punished for doing no wrong. Moving forward, legislatures must undertake thorough re-examination of these doctrines and adopt a new approach, consisting of separate procedures, limited law enforcement sharing, more transparency, and distinct burdens of proof placed on government. Until then, legal scholars and students can enjoy entertaining case titles, like *United States v. Approximately 64,695 Pounds of Shark Fins*.⁶¹

⁶⁰ Peisch v. Ware, 8 U.S. 347, 363 (1808); see also *Bennis*, 516 U.S. at 467.

⁶¹ *United States v. Approximately 64,695 Pounds of Shark Fins*, 520 F.3d 976 (9th Cir. 2008)(Government brought a civil action against cargo of shark fins on basis of an alleged violation of the Shark Finning Prohibition Act).